



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

THE METHODIST HOSPITAL
C/O DAVIS FULLER JACKSON KEENE
11044 RESEARCH BLVD STE A-425
AUSTIN, TX 78759

Respondent Name

ACIG INSURANCE CO

Carrier's Austin Representative Box

47

MFDR Tracking Number

M4-98-0230-01

MFDR Date Received

JULY 14, 1997

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The health care provider's position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on or after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable—not the invalidated per diem rates that were adopted when the new law was passed...We believe that...TWCC defines 'fair and reasonable' as 100% of the total charges, less non-covered items."

Amount in Dispute: \$20,548.37

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "FAILURE TO COMPLY WITH TWCC FULE 133.305; PROVIDER IS BARRED BY THE DOCTRINE OF THE RES JUDICATA FROM RELITIGATING THE ISSUE OF WHETHER THE FEE RATE ESTABLISHED UNDER THE PREVIOUS GUIDELINE MEETS THE STANDARDS OF SECTION 413.011(b); FEES ALREADY PAID ARE IN ACCORDANCE WITH THE ACT; NO DOCUMENTATION TO SUPPORT CLAIM THAT FEES ALREADY PAID ARE NOT IN ACCORDANCE WITH STANDARDS OF SECTION 413.011(b); THE BURDEN OF PROOF RESTS WITH THE HOSPITAL TO SHOW THAT THE FEES PAID TO DATE FALL BELOW STATUTORY STANDARDS; PROVIDER FAILS TO ESTABLISH BY A PREPONDERANCE OF EVIDENCE THAT ADDITIONAL PAYMENTS ARE NECESSARY TO MEET THE STANDARDS OF SECTION 413.011(b); CARRIER'S OWN PROOF ESTABLISHES THAT THE FEE PAID EQUALS OR EXCEEDS THE PAYMENT REQUIRED UNDER SECTION 413.011(b)."

Response Submitted by: Wilson, Grosenheider Moore & Jacobs LLP, 400 W. 15th Street, Austin, TX 78701

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
July 2, 1996 through August 2, 1996	Inpatient Hospital Services	\$20,548.37	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
4. The services in dispute were reduced/denied by the respondent with the following payment exception codes:
 - F – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE HEALTH FACILITY FEE SCHEDULE ASSIGNED BY THE TEXAS WORKERS COMPENSATION COMMISSION. (Z585)
 - F – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE FOR CUSTOMARY ALLOWANCE DETERMINED BY MEDICAL DATA RESEARCH. (Z560)
 - C – THIS DOCUMENT OUTLINES REDUCTION OF CHARGES TAKEN AS A RESULT OF YOUR CONTRACT WITH AFFORDABLE MED NET FOR QUESTIONS REGARDING THIS ANALYSIS, PLEASE CONTACT 800-937-6824.

Findings

1. 28 Texas Administrative Code §133.305(a), effective June 3, 1991, 16 *Texas Register* 2830, requires that "A request for review of medical services and dispute resolution, as described in the Texas Workers' Compensation Act (the Act), §8.26, shall be submitted to the commission at the division of medical review in Austin, no later than one calendar year after the date(s) of service in dispute." The applicability of the one-year filing deadline from the date(s) of service in dispute was confirmed in the court's opinion in *Hospitals and Hospital Systems v. Continental Casualty Company*, 109 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). Per 28 Texas Administrative Code §102.3(a)(3), effective January 1, 1991, 15 *Texas Register* 6747, "unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day." The request for dispute resolution of services rendered on date of service July 2, 1996 through July 13, 1996 were received by the Division on July 14, 1997. Review of the submitted documentation finds that the request was submitted more than one year after the date of service. The Division finds that the request for dispute resolution was not submitted timely. The Division concludes that the requestor has not met the requirements of §133.305(a). Therefore service dates July 2, 1996 through July 13, 1996 will not be considered in this review. However, the request for dispute resolution of services rendered on July 14, 1996 through August 2, 1996 were submitted in accordance with the timely filing requirements of §133.305(a); therefore, these services will be considered in this review.
2. This dispute relates to inpatient hospital services. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
3. The former Texas Workers' Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle."

4. 28 Texas Administrative Code §133.305(d)(7), effective June 3, 1991, 16 *Texas Register* 2830, requires that the request shall include “copies of all written communications and memoranda relating to the dispute.” Review of the documentation submitted by the requestor finds that the request does not include a copy of medical documentation or other written communications and memoranda pertinent to the dispute. The Division concludes that the requestor has not met the requirements of §133.305(d)(7).
5. The insurance carrier reduced or denied disputed services with reason C “THIS DOCUMENT OUTLINES REDUCTION OF CHARGES TAKEN AS A RESULT OF YOUR CONTRACT WITH AFFORDABLE MED NET FOR QUESTIONS REGARDING THIS ANALYSIS, PLEASE CONTACT 800-937-6824.” Review of the submitted information finds insufficient documentation to support that the disputed services are subject to a contractual agreement between the parties to this dispute. The above denial/reduction reason is not supported. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.
6. Review of the submitted documentation finds that:
 - The requestor’s position statement asserts that “The health care provider’s position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on or after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable—not the invalidated per diem rates that were adopted when the new law was passed...We believe that...TWCC defines ‘fair and reasonable’ as 100% of the total charges, less non-covered items.”
 - The Division notes that former Division rule at 28 Texas Administrative Code §42.110(b)(2) is not applicable to the services in dispute. As noted above, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court’s opinion in *All Saints Health System v. Texas Workers’ Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied).
 - The Division finds that a reimbursement methodology based upon payment of a hospital’s billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital’s billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
 - The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
 - The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
 - The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under 28 Texas Administrative Code §133.305. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

September 12, 2012
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.